

# FREEDOM FROM RELIGION *foundation*

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Lynda J. Fairman  
Board Chair  
York County School Board  
302 Dare Rd.  
Yorktown, VA 23692

Re: Unconstitutional prayer at school board meetings

Dear Chair Fairman and School Board members:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding the Board's recent decision to start its meetings with prayer. FFRF is a national nonprofit organization with more than 40,000 members across the country, including more than 900 members in Virginia. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

A concerned District community member reported that on January 8, 2024 during the Board's organization meeting, it voted unanimously to impose prayer on students, parents, and community members at its meetings. Video of the meeting shows that Vice Chair Kimberly Goodwin stated she wanted to "invite local clergy to open our board up with prayer."<sup>1</sup> When she was asked whether the prayer would be before all meetings, or just the regular meetings where students, parents, and community members would be present she noted that she just wanted prayer at the regular meetings.

We ask that the Board immediately rescind its decision to begin opening its meetings with prayer out of respect for the First Amendment rights of and the diversity of York County School Division students, parents, staff, and community.

The Supreme Court has consistently struck down prayers offered at school-sponsored events. *See, e.g., Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000) (striking down school-sponsored prayers at football games); *Lee v. Weisman*, 505 U.S. 577 (1992) (finding prayers at public high school graduations an impermissible establishment of religion); *Wallace v. Jaffree*, 472 U.S. 38 (1985) (overturning law requiring daily "period of silence not to exceed one minute . . . for meditation or daily prayer"); *Abington Twp. Sch. Dist. v. Schempp*, 374 U.S. 203 (1963) (declaring school-sponsored devotional Bible reading and recitation of the Lord's Prayer unconstitutional); *Engel v. Vitale*, 370 U.S. 421 (1962) (holding formal recitation of prayers in public schools unconstitutional). In each of these cases, the Supreme Court struck down school-sponsored prayer because it constitutes government favoritism towards religion, which violates the Establishment Clause of the First Amendment. The Court's decision in *Kennedy v. Bremerton*

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<sup>1</sup> [https://www.youtube.com/watch?v=V\\_Pk4zylre8](https://www.youtube.com/watch?v=V_Pk4zylre8)

*School District* did not alter the law regarding these kinds of coercive prayer practices, nor did it overrule these previous decisions.

It is beyond the scope of a public school board to conduct, or allow others to conduct, prayer as part of its meetings. This practice violates the Establishment Clause of the First Amendment. *See Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369 (6th Cir. 1999); *FFRF v. Chino Valley Unified Sch. Dist. Bd. of Educ.*, 896 F.3d 1132 (9th Cir. 2018), *petition for review en banc denied*, No. 16-55425 (9th Cir., Dec. 26, 2018); *Bacus v. Palo Verde Unified Sch. Dist.*, 52 Fed. Appx. 355 (9th Cir. 2002).

In the most recent case striking down a school board’s prayer practice, the Ninth Circuit Court of Appeals reaffirmed that Establishment Clause concerns are heightened in the context of public schools “because children and adolescents are just beginning to develop their own belief systems, and because they absorb the lessons of adults as to what beliefs are appropriate or right.” *FFRF v. Chino Valley Unified Sch. Dist. Bd. of Educ.*, 896 F.3d 1132, 1137 (9th Cir. 2018). The court reasoned that prayer at school board meetings “implicates the concerns with mimicry and coercive pressure that have led us to ‘be [ ] particularly vigilant in monitoring compliance with the Establishment Clause.’” *Id.* at 1146 (quoting *Edwards v. Aguillard*, 482 U.S. 578, 583–84 (1987)). The Court reaffirmed in *Kennedy* that the schools cannot “‘make a religious observance compulsory.’” *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2429 (2022) (quoting *Zorach v. Clauson*, 343 U. S. 306, 314 (1952)).

The Supreme Court’s decision in *Town of Greece v. Galloway*, permitting sectarian prayers at legislative meetings, like county board meetings or meetings of Congress, has no applicability to the constitutionality of prayers at public school board meetings. In *Chino Valley*, which was decided after *Town of Greece v. Galloway*, the court distinguished the Chino Valley School Board from the deliberative legislative bodies considered in *Marsh v. Chambers* and *Galloway* and held that the board’s prayer practice must be analyzed as a school prayer case. *See Marsh v. Chambers*, 463 U.S. 783 (1983). The court found that “the nature of the audience at the Chino Valley Board meetings, and the nature of its relationship with the governmental entity making policy, are very different from those within the Marsh-Greece legislative-prayer tradition.” 896 F.3d at 1147. The court reasoned that prayers at school board meetings are “not the sort of solemnizing and unifying prayer, directed at lawmakers themselves and conducted before an audience of mature adults free from coercive pressures to participate that the legislative-prayer tradition contemplates. Instead, these prayers typically take place before groups of schoolchildren whose attendance is not truly voluntary and whose relationship to school district officials, including the Board, is not one of full parity.” *Id.* at 1142 (internal citations omitted).

If the Board starts opening its meetings with prayer it will subject the District to unnecessary liability and potential financial strain. When FFRF secured a court order in the *Chino Valley* case regarding its school board prayers, the court ordered the district to pay more than \$200,000 in the plaintiffs’ attorney fees and costs. *Freedom From Religion Found. v. Chino Valley Unified Sch. Dist.*, No. 5:14-cv-02336-JGB-DTB (C.D. Cal. Feb. 18, 2016).<sup>2</sup> After appeal, the court ordered the district to pay an additional \$75,000 for plaintiffs’ attorney fees and costs associated with the appeal for a total of more than a quarter million dollars.

Students and parents have the right—and often reason—to participate in school board meetings. It is coercive, insensitive, and intimidating to force nonreligious citizens, such as our many complainants, to

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<sup>2</sup> [https://ffrf.org/uploads/legal/FFRFvChinoValley\\_FeeOrder.pdf](https://ffrf.org/uploads/legal/FFRFvChinoValley_FeeOrder.pdf)

choose between making a public showing of their nonbelief by refusing to participate in the prayer or else display deference toward a religious sentiment in which they do not believe, but which their school board members clearly do. Board members are free to pray privately or to worship on their own time in their own way. Needlessly including prayer at Board meetings excludes those who are among the 37 percent of Americans who are non-Christians,<sup>3</sup> including the 49 percent of Generation Z who are religiously unaffiliated.<sup>4</sup>

Out of respect for the First Amendment rights and diversity of its community, we ask that the Board rescind its decision to unconstitutionally include prayers at its meetings. Please inform us in writing of the steps the Board is taking to remedy this constitutional violation so that we may inform our complainant. Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Chris Line". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Christopher Line  
Staff Attorney  
Freedom From Religion Foundation

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<sup>3</sup> Gregory A. Smith, *About Three-in-Ten U.S. Adults Are Now Religiously Unaffiliated*, Pew Research Center (Dec. 14, 2021), [www.pewforum.org/2021/12/14/about-three-in-ten-u-s-adults-are-now-religiously-unaffiliated/](http://www.pewforum.org/2021/12/14/about-three-in-ten-u-s-adults-are-now-religiously-unaffiliated/).

<sup>4</sup> 2022 Cooperative Election Study of 60,000 respondents, analyzed by Ryan P. Burge [www.religioninpublic.blog/2023/04/03/gen-z-and-religion-in-2022/](http://www.religioninpublic.blog/2023/04/03/gen-z-and-religion-in-2022/).